

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES FRISKEL

Appeal 2007-1961
Application 10/058,097
Technology Center 2100

Decided: November 14, 2007

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 4-9, 11, 12, 14, 16, and 24-28.
The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have
jurisdiction under 35 U.S.C. § 6(b).

A. INVENTION

The invention at issue on appeal develops and processes a graphical
user interface ("GUI") for a computer application program. (Specification

21.) Complex graphical images are often created for screens of a GUI. Prior approaches to developing applications featuring such complex images required a developer to write a dedicated computer program or to use graphics files embedded in a computer program like a web browser. Once a complex GUI was developed, moreover, making changes to thereto (e.g., adding new windows or buttons) could be time consuming. (*Id.* 2.)

In contrast, the Appellant's graphics engine 112 manages pairs of graphics files and configuration files, which collectively define a GUI for an application. Each pair corresponds to a window forming at least a part of the GUI. Each graphics file 108 contains at least one image defining a window of the GUI; and each configuration file 110 contains parameters defining how the graphics engine processes the graphics file. (*Id.* 21.)

An application program ("application") can be developed and modified merely by creating and modifying a graphics file and configuration file. No re-compilation of graphics engine is required as part of creating or modifying the application. Therefore, explains the Appellant, the application can be created or updated by persons having less skill than would be required to create and modify the computer programming code used to provide graphics engine. (*Id.* 6.)

B. ILLUSTRATIVE CLAIM

Claim 26, which further illustrates the invention, follows.

26. A method of displaying a visible portion of a user interface for an application program, the method comprising:

defining a graphical image for the visible portion of the user interface in a first computer file, wherein the graphical image provides at least an outer boundary of the visible portion;

defining in a second computer file a plurality of parameters for associating a functional portion of the user interface with the graphical image; and

processing the first and second computer files to display the visible portion of the user interface and configure the functional portion of the user interface.

C. REJECTION

Claims 4-9, 11, 12, 14, 16, and 24-28 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,292,185 ("Ko").

II. CLAIM GROUPING

1 "When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped

together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(vii) (2006).¹

Here, the Appellant argues claims 4-9, 11, 12, 14, 16, and 24-28, which are subject to the same ground of rejection, as a group. (Br. 5-8). We select claim 26 as the sole claim on which to decide the appeal of the group. Rather than reiterate the positions of parties *in toto*, we focus on the issues therebetween.

III. IMAGE DEFINING FILE

The Examiner finds, "The image files of the default.xtd comprise image files for displaying the background 702, buttons 704-710, and the dimensions of area 714 (8:21-27). Thus Ko's default.xtd file read on the appellants' claimed 'first computer file' as recited." (Answer 5.) The Appellant argues, "Ko et.al. does not teach or suggest that the disclosed button image is defined in a first computer file. . . ." (Reply Br. 1-2.) Therefore, the issue is whether Ko defines an image for at least an outer boundary of the visible part of a GUI in a first computer file.

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed.Cir. 2003) (internal citations omitted).

A. CLAIM CONSTRUCTION

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324, (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372, (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321, (Fed. Cir. 1989)).

1 Here, claim 26 recites in pertinent part the following limitations:
"defining a graphical image for the visible portion of the user interface in a first computer file, wherein the graphical image provides at least an outer boundary of the visible portion. . . ." Giving the representative claim the broadest, reasonable construction, the limitations require defining, in a first computer file, an image for at least an outer boundary of the visible part of a GUI.

B1. ANTICIPATION ANALYSIS

"[A]nticipation is a question of fact." *In re Hyatt*, 211 F.3d 1367, 1371-72 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15, 19 L. Ed. 829 (1869); *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention.'" *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re LeGrice*, 301 F.2d 929, 936 (CCPA 1962)). Of course, anticipation "is not an 'ipsissimis verbis' test." *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (citing *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 & n.11 (Fed. Cir. 1986)). "An anticipatory reference . . . need not duplicate word for word what is in the claims." *Standard Havens Prods. v. Gencor Indus.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

Here, Ko discloses "[a] method and apparatus for tailoring a graphical user interface", specifically an internet web browser. Col. 1, ll. 21-22. The reference's "FIG. 7 depicts a possible appearance of the customized web browser 700 with a background image 702 shaped as a soda can, with buttons including forward 704, reverse 706, refresh 708, and home 710, [uniform resource locator] URL entry position 712, and a region 714 where [hypertext markup language] HTML will be displayed." Col. 7, ll. 18-22.

An "editing tool program entitled x2edit is provided to allow a user to create customized web browser data files including default.xtc and default.txd . . . for use in creating [the] customized web browser. . . ." Col. 8, ll. 1-5. "Program x2edit also creates file default.txd which includes

the image files of background 702 and buttons 704-710." *Id.* at ll. 21-23. The aforementioned Figure 7 shows that the background image 702 forms the outer boundary of the visible part of GUI 700. Because file default.xtd includes the image file of background 702, which forms the outer boundary of the visible part of GUI 700, we agree with the Examiner's finding that Ko defines, in a first computer file, an image for at least an outer boundary of the visible part of a GUI.

IV. PARAMETERS DEFINING FILE

The Examiner finds, "Functional portion of the interface such as location of the control buttons, its images, and its functions are specified by the default.xtc (6:63-7:7, 7:18-22, 8:18-21). Thus Ko's default.xtc file read on the appellants' claimed 'second computer file' as recited." (Answer 5.) The Appellant argues, "Ko et al. clearly does not disclose that a plurality of parameters for associating functions with the button image are defined in the second file. Ko et al. merely discloses that 'the function of the button' is specified in a file." (Reply Br. 2.) Therefore, the issue is whether Ko defines, in a second computer file, parameters for associating a functional portion of the GUI with the image.

A. CLAIM CONSTRUCTION

Here, claim 26 recites in pertinent part the following limitations: "defining in a second computer file a plurality of parameters for associating a functional portion of the user interface with the graphical image. . . ."

Giving the representative claim the broadest, reasonable construction, the limitations require defining, in a second computer file, parameters for associating a functional portion of the GUI with the image.

B1. ANTICIPATION ANALYSIS

Ko's "[p]rogram x2edit [also] creates file default.xtc which includes the positions of background 702, buttons 704-710, and URL locator 712, as well as the names of the image files background 702 and buttons 704-710." Col. 8, ll. 18-21. In the file default.xtc, moreover, "[d]irective FUNCTION=Back specifies the function of the [respective] button." Col. 7, ll. 2-3.

Because the reference explains that buttons 704, 706, 708, and 710 enable a user to navigate the GUI in the forward direction, navigate it in the reverse direction, refresh the GUI, and navigate it to home, respectively, *id.* at ll. 20-21, we find that these buttons constitute a functional portion of the GUI 700.² We further find that the positions of the background 702, the buttons 704-710, and the URL locator 712, as well as the names of the image files background 702 and buttons 704-710 constitute parameters. By specifying *inter alia* the position of the buttons 704-710 and the positions of the background image 702, which are all displayed on the same GUI 700, the parameters "associate" the buttons with the background image. Because Ko's file default.xtc defines parameters that associate the buttons of his GUI with the background image, we agree with the Examiner's finding that Ko

² By arguing that "Ko et al. merely discloses that 'the function of the button' is specified in a file," (Reply Br. 2), the Appellant admits as much.

defines, in a second computer file, parameters for associating a functional portion of the GUI with the image.

V. ORDER

For the aforementioned reasons, the rejection of claim 26 and of claims 4-9, 11, 12, 14, 16, 24, 25, 27, and 28, which fall therewith under § 102(e) is affirmed.

"Any arguments or authorities not included in the brief or a reply brief filed pursuant to [37 C.F.R.] § 41.41 will be refused consideration by the Board, unless good cause is shown." 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.")

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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